

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council or the Attorney General. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 5. DEPARTMENT OF ADMINISTRATION PERSONNEL ADMINISTRATION

Editor's Note: The following Notice of Final Rulemaking was reviewed per Laws 2009, 3rd Special Session, Ch. 7, § 28. (See the text of § 28 at 15 A.A.R. 1942, November 20, 2009.) The Governor's Office authorized the notice to proceed through the rulemaking process on December 8, 2009.

[R10-82]

PREAMBLE

- 1. Sections Affected**
R2-5-303
- Rulemaking Action**
Amend
- 2. The statutory authority for the rulemaking, including both the authorizing statutes (general) and the statute the rule is implementing (specific):**
Authorizing statutes: A.R.S. §§ 38-611(B) and 41-763
Implementing statute: A.R.S. § 41-763(6)
- 3. The effective date of the rule:**
August 7, 2010
- 4. A list of all previous notices appearing in the *Register* addressing the final rule.**
Notice of Rulemaking Docket Opening: 16 A.A.R. 405, March 5, 2010
Notice of Proposed Rulemaking: 16 A.A.R. 376, March 5, 2010
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Christine Bronson, Employee Relations Manager
Address: 100 N. 15th Ave., Suite 261
Phoenix, AZ 85007
Telephone: (602) 542-1423
Fax: (602) 542-1980
E-mail: Christine.Bronson@azdoa.gov
- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**
R2-5-303 prescribes the procedures for computing an employee's salary due to a personnel action. Specifically, R2-5-303 subsections (K) and (L) prescribe the computation of the salary of an employee who is reduced in grade due to a reduction in force (RIF) and who subsequently repromotes to the class held prior to the RIF or an intervening class.
Under the existing provisions of R2-5-303(K), if an agency conducts a RIF and, as a result, an employee is reduced to a class in a lower pay grade, the employee's salary remains the same. R2-5-303(L) provides that the salary of an employee who is repromoted to the class held prior to the RIF is the salary paid at the time of the RIF or, who is repromoted to an intervening class is set in accordance with subsection (J)(1), which provides for an increase of 7% of the midpoint of the new grade.
Beginning in early 2009, budget reductions began to affect many state agencies and agencies were faced with RIFs that involved employees being reduced in grade due to the RIF. In accordance with the above-referenced rules, employees who were reduced in grade retained their salary, even if the salary exceeded the maximum of the employee's new pay grade. Thus, at a time when an agency is facing budget issues, employees may be reduced in

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grade and performing lower level duties but still being paid the higher salary. In addition, agencies are reporting that employees are declining offers of repromotion because employees reduced in grade due to the RIF have little incentive to repromote, as: (1) their salary has remained the same, even though they have less responsibility, (2) the employee's new position at the lower grade may be eligible for overtime at time and one-half, and (3) if the employee repromotes to the class held before the RIF, the employee will not receive a pay increase for the repromotion.

The Department initiated this rulemaking to amend the referenced subsections to reduce the salary of an employee who is reduced in grade due to a RIF and to provide for corresponding increases to the salary of an employee who is repromoted. Clarifications and housekeeping revisions were also made along with the specific changes.

7. **A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

The agency did not review any study relevant to the rule.

8. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

9. **The summary of the economic, small business, and consumer impact:**

This rule affects only state agencies and state service employees and will not have a direct impact on small businesses or consumers.

There will be a financial benefit to state agencies, but those benefits cannot be determined until specific situations are addressed.

The rulemaking will have a negative financial impact to employees who are reduced in grade due to a RIF. However, the negative impact is anticipated to be short-term, in that it can be offset if the employee repromotes to the class held prior to the RIF or an intervening class, or promotes to another position.

10. **A description of the changes between the proposed rule, including supplemental notices, and final rule (if applicable):**

Minor, non-substantive changes were made between the publication of the notice of proposed rulemaking and this notice of final rulemaking.

11. **A summary of the comments made regarding the rule and the agency response to them:**

As part of the initial rulemaking process, the agency solicited input from several ADOA Human Resources/Personnel Managers.

An oral proceeding on the Notice of Proposed Rulemaking published March 5, 2010, was held on April 7, 2010. No one appeared to speak and no comments were received at the oral proceeding.

12. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None

13. **Incorporations by reference and their location in the rule:**

None

14. **Were these rules previously made as emergency rules? If so, please indicate the Register citation:**

No

15. **The full text of the rule follows:**

TITLE 2. ADMINISTRATION

CHAPTER 5. DEPARTMENT OF ADMINISTRATION
PERSONNEL ADMINISTRATION

ARTICLE 3. CLASSIFICATION AND COMPENSATION

Section

R2-5-303. Salary Administration

ARTICLE 3. CLASSIFICATION AND COMPENSATION

R2-5-303. Salary Administration

- A. Salary. The salary of an employee shall be not less than the minimum nor more than the maximum of the pay grade of the class to which the employee's position is allocated except for:

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1. No change
 2. No change
 3. No change
 4. No change
 5. No change
 6. The salary of an employee that exceeds the maximum salary of the pay grade of a class due to receipt of a special performance adjustment; and
 7. The salary of an employee that exceeds the maximum salary of the pay grade of a class due to the receipt of special payments, such as hazardous duty pay; and
 8. ~~The salary of an employee that exceeds the maximum salary of the pay grade of a class due to a reduction in force as provided in subsection (K).~~
- B.** No change
- C.** No change
1. No change
 2. No change
 3. No change
 4. No change
- D.** No change
1. No change
 2. No change
 - a. No change
 - b. No change
 3. No change
 4. No change
- E.** No change
- F.** No change
1. No change
 2. No change
 3. No change
 4. No change
 5. No change
- G.** No change
1. No change
 2. No change
 3. No change
 4. No change
- H.** No change
- I.** No change
1. No change
 2. No change
- J.** No change
1. No change
 2. No change
 3. No change
 4. No change
 5. No change
 - a. No change
 - b. No change
 6. No change
- K.** Reduction in force. The salary of an employee who is reduced to a class in a lower pay grade due to a reduction in force ~~remains the same shall be decreased by 5% provided that the reduced salary is within the pay range for the position. even if the salary is higher than the maximum salary of the new pay grade. Unless the employee's salary is less than the maximum of the new pay grade at a later date, the employee is not eligible for a general salary adjustment or a performance increase. If the decrease would result in a salary less than the minimum salary or greater than the maximum salary of the lower pay grade, the employee's salary shall be the minimum salary or the maximum salary of the lower pay grade, respectively.~~
- L.** Repromotion.
1. No change
 2. The salary of an employee who is repromoted to a class with a higher pay grade than the current class but with a

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lower pay grade than the class held prior to the reduction in force, shall be set in accordance with subsection (J)(1)-, provided the new salary does not exceed the salary the employee was earning before the reduction to the lower pay grade. If the promotional increase to the employee's salary results in a salary that is greater than the employee's salary before the reduction, the employee shall be paid the same salary as that paid before the reduction plus the percentage or dollar amount of increase of an intervening general salary adjustment or special market adjustment for which the employee is eligible, and the dollar amount of a performance increase that the employee received at the lower pay grade.

3. A repromoted employee may accept a lower salary in the new pay grade than is otherwise authorized if fiscal constraints prohibit the granting of the normal promotional increase and the new salary is not less than the entrance salary of the new pay grade. The employee's salary shall be within the ~~established~~ range of the pay grade.

M. No change

1. No change
 - a. No change
 - b. No change
 - c. No change
2. No change
3. No change

N. No change

O. No change

P. No change

Q. No change

1. No change
2. No change
3. No change
4. No change
5. No change

NOTICE OF FINAL RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION TITLE, REGISTRATION, AND DRIVER LICENSES

Editor's note: The following Notice of Final Rulemaking was reviewed per Laws 2009, 3rd Special Session, Ch. 7, § 28 (15 A.A.R. 1942, November 20, 2009) and the Governor's Regulatory Review Plan memorandum, January 22, 2009 and the continuations issued April 30, June 29 and October 16, 2009 (15 A.A.R. 241, January 23, 2009; 15 A.A.R. 735, May 1, 2009; 15 A.A.R. 1130, July 3, 2009; and 15 A.A.R. 1759, October 23, 2009; respectively.) The Governor's Office authorized the notice to proceed through the rulemaking process on November 10, 2009.

[R10-83]

PREAMBLE

1. Sections Affected

R17-4-301
R17-4-312

Rulemaking Action

Amend
New Section

2. The statutory authority for the rulemaking, including both the authorizing statutes (general) and the statutes the rules are implementing (specific):

Authorizing statutes: A.R.S. §§ 28-366 and 28-1177

Implementing statutes: A.R.S. §§ 28-1176 through 28-1181

3. The effective date of the rule:

August 7, 2010

4. A list of all previous notices appearing in the Register addressing the final rules:

Notice of Rulemaking Docket Opening: 15 A.A.R. 133, January 9, 2009

Notice of Rulemaking Docket Opening: 15 A.A.R. 2148, December 25, 2009

Notice of Proposed Rulemaking: 15 A.A.R. 2128, December 25, 2009

Notices of Final Rulemaking

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: John Lindley, Administrative Rules Analyst
Address: Administrative Rules Unit
Department of Transportation, Motor Vehicle Division
1801 W. Jefferson St., Mail Drop 517M
Phoenix, AZ 85007
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Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters at www.azdot.gov/mvd/mvdrules/rules.asp.

6. An explanation of the rules, including the agency's reasons for initiating the rules:

The Arizona Department of Transportation, Motor Vehicle Division, engages in this rulemaking to prescribe the application procedure, design and placement, and user fee associated with the off-highway vehicle user indicia prescribed under A.R.S. § 28-1177.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

None

8. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. The summary of the economic, small business, and consumer impact:

The Division anticipates, as a result of this rulemaking, a minimal economic impact to qualified persons and business entities seeking to operate off-highway vehicles, as defined under A.R.S. § 28-1177, after December 31, 2008. Costs may include additional administrative expenses for preparing the prescribed application and a nominal user fee for each all-terrain vehicle or off-highway vehicle registered with the Department under A.R.S. § 28-1177, depending on the owner's declared use.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

Minor grammatical and style corrections were made at the request of the Governor's Regulatory Review Council staff.

11. A summary of the comments made regarding the rules and the agency response to them:

The agency received no comments regarding the rules.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

13. Incorporations by reference and their location in the rules:

None

14. Were these rules previously made as emergency rules? If so, please indicate the Register citation:

No

15. The full text of the rules follows:

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION
TITLE, REGISTRATION, AND DRIVER LICENSES

ARTICLE 3. VEHICLE REGISTRATION

Section

R17-4-301. Definitions

R17-4-312. ~~Transferred~~ Off-highway Vehicle User Indicia

ARTICLE 3. VEHICLE REGISTRATION

R17-4-301. Definitions

Definitions. In addition to the definitions prescribed under A.R.S. §§ 28-101, 28-2231, and 28-5100, the following definitions apply to this Article, unless otherwise specified:

~~“Alternative form of registration” means an allocated registration, apportioned registration, interstate registration, and undersized mobile home plate registration.~~

“Apportioned commercial vehicle” means a commercial vehicle that is subject to the proportional registration provisions prescribed under A.R.S. § 28-2233.

“Biennial” means once every two years.

“Business day” means a day other than a Sunday or holiday.

“Calendar quarter” means the following time periods established by the Division: January 1 to March 31, April 1 to June 30, July 1 to September 30, and October 1 to December 31.

“Day” means the 24-hour period from one midnight to the following midnight.

“Disabled person” means a recipient of public monies as a disabled individual under Title 16 of the Social Security Act.

~~“Director” means the Assistant Director for the Arizona Department of Transportation’s Motor Vehicle Division or the Assistant Director’s designee.~~

“Division” means the Arizona Department of Transportation’s Motor Vehicle Division.

“Division Director” means the Assistant Director for the Arizona Department of Transportation’s Motor Vehicle Division or the Assistant Director’s designee.

“Drop box” means a receptacle designated by the Division into which a person places vehicle registration forms and fees, and from which the Division retrieves these items daily.

“Effective date of registration” means the date the vehicle first becomes subject to registration fees in Arizona.

“Electronic delivery” means the transmission of registration and credit card information to the Division, by computer, through an ~~Authorized Third-party Electronic Delivery Provider~~ authorized third party electronic service provider.

“Emergency Vehicle Permit” means a document issued by the Division’s Enforcement Services Program to a private fire department for a single fire engine that authorizes the driver of a permitted vehicle to exercise the privileges prescribed under A.R.S. § 28-624.

“Expiration date” means the day, month, and year in which a vehicle registration expires.

“Fire Engine” means a motor vehicle containing fire-fighting equipment capable of extinguishing fires.

“IM147 Test” means the emissions test prescribed under A.R.S. § 49-542(F)(2)(a).

“Included vehicle” means a vehicle subject to annual or biennial Arizona registration unless otherwise excluded from the staggered registration prescribed under A.R.S. § 28-2159 and R17-4-304.

“Initial registration” means the first registration of an included vehicle in Arizona.

“OBD” means the On-Board Diagnostics emissions test prescribed under A.R.S. § 49-542(F)(2)(a).

“Off-highway vehicle” has the same meaning as prescribed under A.R.S. § 28-1171.

“Operator Requirements” means the requirements given in Chapter 2, Basic Driver/Operator Requirements, of the National Fire Protection Association Standard for Fire Apparatus Driver/Operator Professional Qualification (NFPA 1002), 1998 edition, which is incorporated by reference and on file with the Arizona Department of Transportation and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments.

~~“Private Fire Department”~~ “fire department” means a fire fighting business equipped to provide emergency fire-fighting devices for a private purpose that is neither a public service corporation nor a municipal entity.

“Private Fire Emergency Vehicle” means a fire engine operated by a private fire department for which an Emergency Vehicle Permit is issued.

“Registration” means the authorization, issued by the Division that allows a vehicle to use state highways.

“Registration fees” means the fees due to the Division at the time of registration and consisting of the general registration fees imposed ~~by~~ under A.R.S. § 28-2003, the vehicle license tax imposed ~~by~~ under A.R.S. § 28-5801, and the commercial registration and gross weight fees imposed ~~by~~ under A.R.S. § 28-5433.

“Registration period” means the time-frame during which a vehicle registration is valid.

“Renewal registration” means the second and subsequent registration of an included vehicle.

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R17-4-312. ~~Transferred~~ Off-highway Vehicle User Indicia

- A.** For lawful Arizona off-highway operation, the owner or operator of a qualifying all-terrain vehicle, off-highway vehicle, or off-road recreational motor vehicle shall apply to the Department for an off-highway vehicle user indicia as prescribed under A.R.S. § 28-1177. The owner or operator shall submit to the Division:
 - 1. The off-highway vehicle user indicia application provided by the Division, and
 - 2. The fee prescribed under subsection (C).
- B.** The owner or operator shall indicate, on the application submitted to the Division under subsection (A), one of the following categories of intended vehicle usage:
 - 1. Exclusively off-highway;
 - 2. Primarily off-highway, occasionally on-highway; or
 - 3. Primarily on-highway, occasionally off-highway.
- C.** The fee for each off-highway vehicle user indicia issued or renewed by the Department under A.R.S. § 28-1177 is \$25.
- D.** The off-highway vehicle user indicia, issued by the Division under subsection (A), shall have the same basic design as the license plate tab issued by the Division for other types of vehicles and shall contain the letters OHV.
- E.** The applicant shall display the off-highway vehicle user indicia in the upper left corner of the license plate issued by the Division under A.R.S. Title 28, Chapter 7, Articles 11 through 15.